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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 590

C. EDWARD DAVIS,

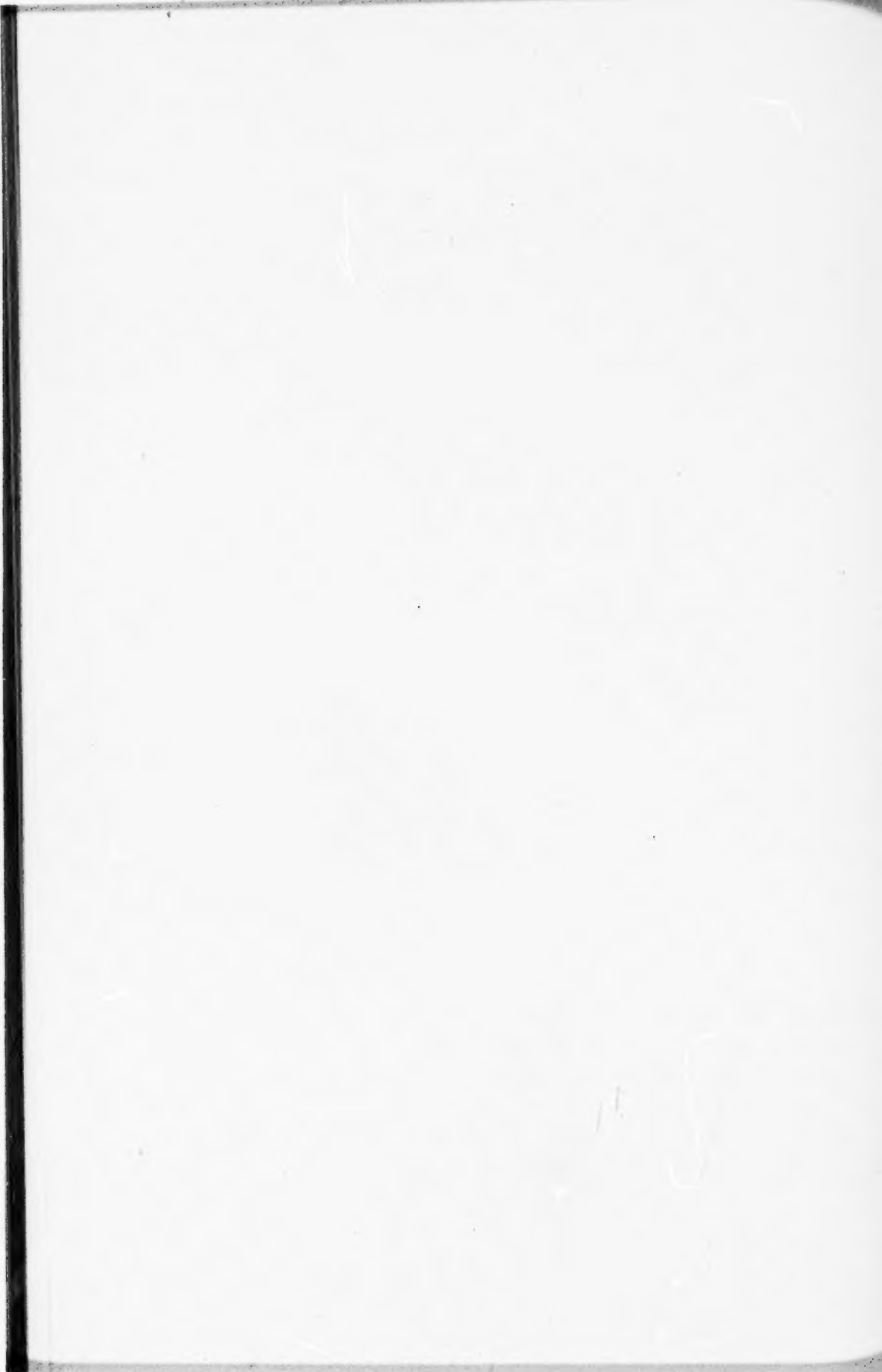
*Petitioner,*

*vs.*

UNITED STATES OF AMERICA; LAWRENCE S. CAMP, AS UNITED STATES ATTORNEY FOR THE NORTHERN DISTRICT OF GEORGIA; N. A. McKEW, AS UNITED STATES POSTAL INSPECTOR, AND F. R. KENDRICK, AS CLERK OF THE SUPERIOR COURT OF MURRAY COUNTY, GEORGIA.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

D. H. REDFEARN,  
R. H. FERRELL,  
*Counsel for Petitioner.*



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**PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS  
FOR THE FIFTH CIRCUIT.**

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*To the Honorable Supreme Court of the United States:*

Petitioner prays that a writ of certiorari issue to review the judgment of the United States Circuit Court of Appeals for the Fifth Circuit entered in the above entitled cause on the 18th day of October, 1943, affirming the judgment of the District Court of the United States for the Northern District of Georgia (R. 63). A petition for rehearing was filed (R. 64) and the same was denied on the 3rd day of December, 1943 (R. 71).

### **Opinions Below.**

The final judgment of the district court (R. 30-32) is unreported. The opinion of the United States Circuit Court of Appeals (R. 61-63) is reported in 138 F. (2d) 406.

### **Jurisdiction.**

The jurisdiction of this Court is invoked under Section 240(a) of the Judicial Code, as amended, 28 U. S. C. A., Section 347(a).

### **Question Presented.**

Where an administrator's deed is sent by mail from Miami, Florida, to the clerk of the Superior Court of Murray County, Georgia, with money to cover recording charges; and where a United States postal inspector had anticipated the filing of such a deed and had instructed said clerk to call him when it arrived; and where said clerk received said deed, recorded it, advised by long distance telephone said inspector that he had said deed, and then held it for four days until said inspector obtained possession of it by an illegal order of the Judge of the Superior Court of said Murray County; and where said inspector then delivered it to the United States district attorney at Atlanta, Georgia, for his investigation and study and after twenty-eight days said inspector returned it to said clerk but simultaneously therewith the United States marshal served said clerk with a subpoena duces tecum commanding him to produce said deed before the federal grand jury at Atlanta, Georgia; and where by appropriate proceedings petitioner promptly sought to quash, suppress and withhold from said grand jury said deed and have the same returned to him, but said relief was denied by the District Court of the United States for the Northern District of Georgia, and said judgment was affirmed by the Circuit Court of Appeals,

did said judgment and its affirmance deny said sender of the deed the rights guaranteed to him by the Fourth and Fifth Amendments to the Constitution of the United States.

### **Statement.**

On December 2, 1941, F. R. Kendrick, Clerk of the Superior Court of Murray County, Georgia, received at Chatsworth, Georgia, through the United States mail, an administrator's deed sent him by C. Edward Davis, of Miami, Florida, for recording on the public records of said county. Money to cover the fees for recording was enclosed with the deed (R. 55). The deed purported to convey approximately 1,750 acres of wild lands in Murray, Whitefield, Dawson and Lumpkin Counties, Georgia. On December 5, 1941, said deed was recorded in Deed Book 15, page 349 (R. 36, 44). Previous to the receipt of said deed by said clerk and its recording, United States postal inspector N. A. McKew, had visited clerk Kendrick's office and had told him that he expected him to call him next time Davis sent him a deed to be recorded (R. 44). Kendrick complied with said instructions by calling McKew by long distance telephone and upon McKew's visit to said clerk's office, said clerk showed him the deed. They then went together to see Judge John C. Mitchell, judge of the Superior Court of Murray County, Georgia, taking the deed with them (R. 45). On the 8th day of December, 1941, said McKew presented to the judge of said Superior Court the unverified petition of Lawrence S. Camp, as District Attorney, of the United States, in which it was alleged that said administrator's deed was in the possession of Kendrick, the clerk of the Superior Court of Murray County, and that it attempted to convey to C. Edward Davis certain lands in Murray County, title to which was in and possession held by the United States. The petition prayed for an order directing clerk Kendrick to deliver said deed to postal inspector McKew,

as agent of the United States district attorney, for the purpose of an examination thereof (R. 8-9). Thereupon, said judge entered an order authorizing and directing the delivery by said clerk of said deed to said postal inspector McKew for a period not to exceed thirty days (R. 10). On December 9, 1941, said deed was delivered under said order to said inspector (R. 11) who took it to said United States attorney. On an examination thereof by said attorney "certain other facts were disclosed" which said attorney deemed sufficient to authorize a criminal investigation (R. 47-48). On January 6, 1942, said McKew returned said deed to said clerk, (R. 11) but immediately thereupon said Kendrick was served with a subpoena duces tecum calling for the production by him of said document before the federal grand jury in Atlanta, Georgia, on the 9th day of March, 1942 (R. 37, 38, 39, 40). On the 25th day of February, 1942, C. Edward Davis filed before Honorable E. Marvin Underwood, Judge of the District Court of the United States for the Northern District of Georgia, at Atlanta, his motion and petition to quash, suppress and withhold from said grand jury the said administrator's deed and for its return to him (R. 3-10). Rule Nisi was issued on said motion (R. 11). Responses were filed by the United States, the said N. A. McKew, as postal inspector, and F. R. Kendrick, as said clerk (R. 16-18, 19, 20-28). On July 7, 1942, a hearing upon said motion to suppress was had. Stipulation was entered into as to the salient facts (R. 37-38). Oral testimony of clerk Kendrick and assistant United States attorney, Astor Merritt, was adduced.

The said Merritt testified that he prepared the petition presented to Judge Mitchell of the Superior Court of Murray County, at the direction of the United States district attorney because it was their opinion that the deed constituted a cloud upon the title to lands of the United States



and that an investigation of said deed should be made; but that upon the investigation by said United States attorney "certain other facts were disclosed" which said attorney deemed sufficient to authorize a criminal investigation (R. 47-49). A motion to enter judgment upon the pleadings and stipulation was over-ruled (R. 28-29). After full hearing on the petition and motion to quash and suppress the use of said deed as evidence before the federal grand jury, and for the return thereof to petitioner, the court overruled and denied the same and ordered said deed impounded in the district court of the United States by depositing the same with the clerk of said court (R. 51), and then ordered the return of said deed to said Kendrick so that he might respond to said subpoena (R. 32).

From this judgment and order denying and overruling said motion and petition an appeal was taken to the Circuit Court of Appeals for the Fifth Circuit (R. 1-3), and said judgment was affirmed (R. 63).

### **Specifications of Errors To Be Urged.**

(1) The Circuit Court of Appeals erred in holding that in the original taking of said administrator's deed by the United States postal inspector and United States attorney from the clerk of the Superior Court of Murray County, Georgia, there was "no invasion of privacy, no physical or moral compulsion exerted, no unlawful search or taking from Davis" (R. 63).

(2) The Circuit Court of Appeals erred in holding that Davis had "made a voluntary exposition of the instrument which he now seeks to hide from view, and is not now in position to demand return of the deed and thereby suppress the story it tells" (R. 63).

The Circuit Court of Appeals has decided an important constitutional question in a way probably in conflict with

decisions of this Court and other Circuit Courts of the United States.

WHEREFORE, petitioner respectfully prays that a writ of certiorari issue to the Circuit Court of Appeals for the Fifth Circuit.

D. H. REDFEARN,  
R. H. FERRELL,  
*Counsel for Petitioner.*

